

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-199060

DATE: July 22, 1980

MATTER OF: Captain John H. VanderMolen, USAFR

DIGEST: Air Force member who successfully sues in Federal District Court for reinstatement to active duty and damages may not recover on an administrative claim for backpay in excess of \$10,000 jurisdictional limitation of district court under 28 U.S.C. § 1346(a)(2). Since claim filed concerns same parties and issues, including amount of damages, as decided by district court, doctrine of res judicata precludes consideration of this claim.

The question in this case is whether a claimant who successfully sues the Government in United States District Court for backpay may then file an [administrative claim *for Backpay*] and receive the amounts of backpay in excess of the \$10,000 jurisdictional limitation of the court under 28 U.S.C. § 1346(a)(2) (1976). As will be explained, the claim may not be paid.

The question is submitted for an advance decision by Ernest E. Heuer, Chief, Accounting and Finance Division, Directorate of Resource Management, Headquarters Air Force Accounting and Finance Center, and concerns the claim of Captain John H. VanderMolen, USAFR.

The following recitation of the facts of this case will only deal with those relevant to a resolution of the question raised. We note, however, that the factual background leading up to the suit by Captain VanderMolen can be found in VanderMolen v. Stetson, 571 F. 2d 617 (D.C. Cir. 1977).

Captain VanderMolen brought suit in the United States District Court claiming his February 19, 1971 discharge from the Air Force was illegal and he sought reinstatement to active duty and damages. Since the claimant's alleged period of wrongful discharge constituted a potential claim in excess of \$10,000, Captain VanderMolen waived recovery

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in excess of this amount. He did so because the district court's jurisdiction is limited to considering claims of this type against the Government which do not exceed \$10,000. 28 U.S.C. § 1346(a)(2).

After the District Court for the District of Columbia granted the Government's motion for summary judgment and dismissed the claimant's case, the Court of Appeals for the District of Columbia reversed this decision. The Court of Appeals ruled that his discharge was illegal and that he was entitled to backpay in accordance with law not to exceed \$9,999.99. Additionally, the court remanded the case to the trial court to determine if the Air Force's cancellation of the claimant's scheduled promotion to captain was supportable. VanderMolen v. Stetson, 571 F. 2d 617, 627-628 (D.C. Cir. 1977).

On the basis of the trial court's action, the Air Force corrected the member's records to reflect constructive active duty as a lieutenant from February 20, 1971, to April 18, 1972, and as a captain from April 19, 1972, to May 24, 1978, the date he was released from active duty.

According to the Air Force, for this period Captain VanderMolen was entitled to active duty pay and allowances of \$123,833.58 less civilian earnings of \$59,203.78 and Veterans Administration benefits of \$5,975.88. He received \$9,999.99 on the basis of the court judgment as well as \$1,000.71 in adjustments to his accrued leave settlement. The Air Force encloses a voucher for the balance on the basis of an administrative claim filed by Captain VanderMolen; however, they question whether the claim may be paid in view of the claimant's waiver of recovery in excess of \$10,000.

In our decision B-157414, April 26, 1978, we discussed in detail the effect of a Federal District Court judgment in a classification suit specifying a backpay award to Federal employees which potentially exceeded \$10,000. We ruled that the court litigation constituted a full and final resolution of the issues including the Government's liability to the claimants. Therefore, as

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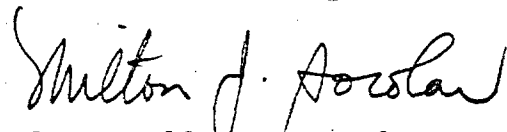
explained in 47 Comp. Gen. 573 (1968), the doctrine of res judicata precluded us from considering a case involving the same parties and issues as were before the court. See also 53 Comp. Gen. 813 (1974).

Accordingly, since Captain VanderMolen has chosen to have the Federal District Court fully adjudicate the issues involved in his claim against the Government, we may not consider his claim for additional amounts he believes due arising out of the same facts and for the same period covered by the court's judgment.

Additionally, the Air Force raises certain questions regarding the barring acts' (31 U.S.C. § 71a) effect on this claim. Since the claim is not for allowance, we shall not answer these questions. We do, however, feel constrained to comment on one further issue.

The Air Force awarded backpay from the date of wrongful discharge, February 20, 1971, until May 24, 1978. We have informally verified the date of the court order with a member of the Air Force Judge Advocate Corps and have been informed that the district court issued its judgment on May 3, 1978. Therefore, the court judgment covers the period from February 20, 1971, to May 3, 1978, and for this period the award to Captain VanderMolen is limited to \$10,000.

For the period after judgment from May 4, 1978, to his discharge on May 28, 1978, Captain VanderMolen's backpay should be computed in accordance with law, and he is entitled to receive the amount due him, if any.



For The Comptroller General
of the United States